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ATTORNEYS FOR PLAINTIFF
United States of America

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

**Eleven Parcels of Real Property
Located in Gallatin County,
Montana; \$1,095,378.17 in United
States Funds; 2011 Aston
Martin/Vantage V-12; and 2011 Ford
Expedition,**

Defendants.

CV 12-10-BU-DLC

**UNITED STATES' FIRST
AMENDED VERIFIED
COMPLAINT *IN REM***

Plaintiff, United States of America, by its Attorney, Victoria L. Francis,
Assistant U.S. Attorney for the District of Montana, brings this complaint and

alleges as follows:

NATURE OF THE ACTION

1. This is an action to forfeit and condemn to the use and benefit of the United States of America eleven (11) parcels of real property, \$1,095,378.17 in United States funds, 2011 Aston Martin/Vantage V-12 (VIN: SCFEBBCF7BGS00607), and 2011 Ford Expedition (VIN: 1FMJK2A59BEF05766). The real and personal property is subject to forfeiture under 18 U.S.C. Sections 981(a)(1)(A) and (C) and 985, for violations of 18 U.S.C. Sections 545 and 1956(a)(1)(B)(i), as property which is derived from proceeds traceable to violations of 18 U.S.C. Section 545 and money laundering violations. The eleven (11) parcels of real property are located in Gallatin County, Montana, and are more particularly described as follows:

Parcel 1: Tract A-2 of Certificate of Survey No. 957-A, being a portion of Tract A of Certificate of Survey No. 957, located in the E1/2NE1/4 of Section 2, Township 1 South, Range 5 East, P.M.M. Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder of Gallatin County, Montana. (The real property or its address is commonly known as 4959 Hallelujah Lane, Belgrade, Montana 59714.)

Parcel 2: Tract 1 of Certificate of Survey No. 2169A, located in the NE1/4 of Section 3, Township 1 North, Range 5 East, P.M.M., Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the County

Clerk and Recorder, Gallatin County, Montana. (The real property or its address is commonly known as 100 Elk Springs Road, Belgrade, Montana 59714.)

Parcel 3: Tract 2 of Certificate of Survey No. 2169A, located in the NE1/4 of Section 3, Township 1 North, Range 5 East, P.M.M., Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder, Gallatin County, Montana. (The real property consists of 20.569 acres, more or less.)

Parcel 4: Lot 4 of Certificate of Survey No. 2205, located in the NW1/4 of Section 3, Township 1 North, Range 5 East, M.P.M., Gallatin County, Montana. (The real property consists of 40 acres, more or less.)

Parcel 5: Tract 1 of Certificate of Survey No. 2687, a tract of land located in Section 3, Township 1 North, Range 5 East, P.M.M., Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder of Gallatin County, Montana. (The real property or its address is commonly known as 3743 Reese Creek Road, Belgrade, Montana 59714.)

Parcel 6: Tract 11 of Certificate of Survey No. 448-A, located in Section 11, Township 1 North, Range 7 East, P.M.M., Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder, Gallatin County, Montana. (The real property consists of 26.557 acres, more or less.)

Parcel 7: Tract 12 of Certificate of Survey No. 448-A, located in Section 11, Township 1 North, Range 7 East, P.M.M., Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder, Gallatin County, Montana. (The real property or its address is commonly known as 315 Shaggy

Black Bear Road, Bozeman, Montana 59715.)

Parcel 8: Tract 13 of Certificate of Survey No. 448-A, located in Section 11, Township 1 North, Range 7 East, P.M.M., Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder, Gallatin County, Montana. (The real property consists of 21.752 acres, more or less.)

Parcel 9: Tract 14 of Certificate of Survey No. 448-A, located in Section 11, Township 1 North, Range 7 East, P.M.M., Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder, Gallatin County, Montana. (The real property consists of 23.871 acres, more or less.)

Parcel 10: Tract 19 of Certificate of Survey No. 448-A, located in Section 11, Township 1 North, Range 7 East, P.M.M., Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder, Gallatin County, Montana. (The real property consists of 20.943 acres, more or less.)

Parcel 11: W $\frac{1}{2}$ NE $\frac{1}{4}$ and the NW $\frac{1}{4}$ East of the centerline of Middle Creek, all in Section 30, Township 1 South, Range 5 East, Gallatin County, Montana. (Deed Reference: Film 160, Page 3411).

EXCEPTING THEREFROM: that portion conveyed to the Montana Department of Transportation in Bargain and Sale Deed, recorded August 16, 2007, Document No. 2275771, records of Gallatin County, Montana.

EXCEPTING THEREFROM: That part of the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 30, Township 1 South, Range 5 East of P.M.M., Gallatin County, Montana, described as follows:

Commencing at the northeast corner of said Section 30: thence westerly $269^{\circ}48'26''$, assumed azimuth from north, 1512.75 feet along the north line of the Northeast Quarter of said Section 30; thence southerly $179^{\circ}48'26''$ azimuth 91.86 feet to the south right of way line of Valley Center Road and being the point of beginning of the property to be described; thence easterly $089^{\circ}48'26''$ azimuth 54.34 feet along said south right of way line to a point on a curve with the center of circle lying westerly $269^{\circ}48'26''$ azimuth 100.00 feet from said point; thence southerly 52.36 feet along said curve, radius 100.00 feet and central angle $30^{\circ}00'00''$; thence westerly $269^{\circ}48'26''$ azimuth 40.94 feet; northerly $359^{\circ}48'26''$ azimuth 50.00 feet to the point of beginning. According to COS 2791.
(The real property consists of 110.223 acres, more or less.)

JURISDICTION AND VENUE

2. Plaintiff brings this action *in rem* in its own right to forfeit and condemn the defendant real and personal property under 18 U.S.C. Sections 981(a)(1)(A) and (C), and 1956(a)(1)(B)(i) and (c)(7)(D) in that said property was derived from proceeds traceable to violations of 18 U.S.C. Section 545, smuggling or importing or bringing into the United States merchandise contrary to law, or receiving, concealing, buying or selling or in any manner facilitating the same knowing it has been imported or brought into the United States contrary to law, and money laundering. This court has jurisdiction over the action under 28 U.S.C. Sections 1345 and 1355(b). Such a civil judicial forfeiture is authorized by 18 U.S.C. Sections 981 and 985.

3. Venue is proper in this district pursuant to 28 U.S.C. Sections 1355(b)(1)(A) and (B), and 1395(a) or (b), because this is a civil proceeding for the forfeiture of property located in this district and related to acts or omissions which occurred in this district.

THE DEFENDANTS *IN REM*

4. The defendant property consists of real property located in Gallatin County, Montana, and personal property, *i.e.*, United States funds and two vehicles, which were located and seized in Gallatin County, Montana. The defendant property is more particularly described in paragraph 1 above.

FACTS

5. The FDA is the federal agency responsible for protecting the health and safety of the American public by ensuring, among other things, that drugs are safe and effective for their intended uses and bear labeling that contains true and accurate information. FDA's responsibilities include regulating the manufacture and distribution of drugs, including prescription drugs, shipped or received in interstate commerce, as well as the labeling of such drugs. FDA carries out its responsibilities by enforcing the Federal Food, Drug, and Cosmetic Act (FDCA) and other pertinent laws and regulations.

6. The FDCA defines a "drug" to include "articles recognized in the official

United States Pharmacopoeia," "articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man," and "articles...intended to affect the structure or any function of the body of man." 21 U.S.C. § 321(g)(1)(A), (B) and (C).

7. Prescription drugs are drugs that, because of their toxicity and other potential for harmful effects, are not safe for use except under the supervision of a practitioner licensed by law to administer such drugs. 21 U.S.C. § 353(b)(1)(A). A drug is also a prescription drug if the FDA requires it to be administered under the supervision of a practitioner licensed by law to administer such drug as a condition of the FDA's approval of the drug. 21 U.S.C. § 353(b)(1)(B).

8. One of Congress' goals in enacting and amending the FDCA over time has been to ensure the integrity of America's drug supply. Congress determined that the public interest in the purity of prescription drugs and pharmaceutical products distributed to American consumers is so great as to warrant imposition of the highest standard of care on those who distribute those products to the public. Under the FDCA, the responsibility for maintaining the quality and safety of drugs is not placed on the innocent public that purchases drugs but rather on those who sell and distribute drugs. Under the FDCA, consumers have a right to expect that drug distributors will be vigilant and responsible in matters that affect the public

health. Furthermore, consumers receiving pharmaceutical products from distributors in the United States have an expectation that the pharmaceuticals they are receiving are safe and have been approved by the U.S. Food and Drug Administration. See *Canadian Import Antitrust Litigation v. Pfizer, Inc.*, 470 F.3d 785, 788-791 (8th Cir. 2006).

9. While the U.S. wholesale distribution market is highly regulated, many other markets around the world are not. Pharmaceutical distributors who circumvent U.S. law and illegally import foreign pharmaceuticals into the United States put their customers and patients at risk for receiving counterfeit, misbranded, and/or adulterated drugs.

10. The FDCA prohibits doing and causing the following acts:

- a. Introducing or delivering for introduction into interstate commerce any drug that is misbranded. 21 U.S.C. § 331(a).
- b. Receiving in interstate commerce a misbranded drug and delivering or proffering delivery of such drug for pay or otherwise. 21 U.S.C. § 331(c).
- c. Introducing or delivering for introduction into interstate commerce any new drug that is not approved by FDA under 21 U.S.C. § 355, 21 U.S.C. §§ 331(d), 355(a).

11. The FDCA defines interstate commerce as "(1) commerce between any State or Territory and any place outside thereof, and (2) commerce within the District of Columbia or within any other territory not organized with a legislative body." 21 U.S.C. § 321(b).

12. The FDCA provides that any person who commits or causes to be committed an act prohibited under the FDCA may be imprisoned for not more than one year, or fined not more than \$1,000, or both. 21 U.S.C. § 333(a)(1). If committed with the intent to defraud or mislead, commission of a prohibited act is punishable by up to three years in prison and a fine, or both. 21 U.S.C. § 331(a)(2).

13. Under the FDCA, a drug is deemed to be misbranded unless its labeling bears adequate directions for use. 21 U.S.C. § 352(f)(1). Under FDA regulations, "adequate directions for use" means directions under which a layman can self-administer a drug safely and for its intended purposes. 21 C.F.R. § 201.5. Unlike over-the-counter drugs – which are intended for self administration—prescription drugs by their very nature are safe for use only under the supervision of a licensed practitioner. 21 U.S.C. § 353(b)(1)(A). Adequate directions for use, therefore, do not exist for prescription drugs.

14. To allow for the lawful movement of approved prescription drugs in

interstate commerce, drugs that have been approved by FDA through a “new drug application” (NDA) are exempt from the FDCA requirement that they bear adequate directions for use, so long as certain requirements are met. 21 U.S.C. § 352(b)(2); 21 C.F.R. §§ 201.100, 201.115. One such requirement is that labeling "on or within the package from which the drug is to be dispensed bears adequate information for its use, including indications, effects, dosages, routes, methods, and frequency and duration of administration, and any relevant hazards, contraindications, side effects, and precautions under which practitioners licensed by law to administer the drug can use the drug safely and for the purposes for which it is intended, including all purposes for which it is advertised or represented." For articles subject to the new drug approval requirement, this labeling must be the same one approved in the NDA for that drug.

15. Foreign versions of FDA-approved drugs often do not meet the exemption because the labeling approved by foreign regulatory authorities differs from the FDA-approved labeling that must accompany the product for the exemption from the adequate directions for use requirement to apply.

16. A drug is also misbranded if any word, statement, or other information required to appear on the label or labeling is not prominently placed thereon. 21 U.S.C. § 352(c). Under FDA regulations, a drug may be misbranded under section

352(c) unless "all words, statements, and other information required by or under authority of the act to appear on the label or labeling shall appear thereon in the English language" 21 C.F.R. § 201.15.

17. Under the FDCA, a prescription drug is also deemed to be misbranded if at any time prior to dispensing, the label of the drug fails to bear the symbol "Rx only." 21 U.S.C. § 353(b)(4)(a).

18. A drug is a "new drug" if it is "not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling thereof" 21 U.S.C. § 321(p)(1).

19. New drugs require an approved NDA before they can lawfully be introduced into interstate commerce. 21 U.S.C. §§ 331(d) and 355. The purpose of an NDA is to provide FDA with enough information to make an approval decision. FDA's decision focuses on three factors: (1) whether the drug is safe and effective for each proposed use, and whether the benefits of the drug outweigh the risks; (2) whether the drug's proposed labeling (package insert) is appropriate, and what it should contain; and (3) whether the methods used in manufacturing the drug and the controls used to maintain the drug's quality are adequate to preserve

the drug's identity, strength, quality, and purity.

20. An approved NDA authorizes a sponsor to manufacture and distribute only the exact drug described in the application. Manufacturing must occur only at facilities authorized under the approved NDA; the drug may bear only the FDA-approved package insert; and the drug may be distributed only for uses prescribed, recommended, or suggested in the approved labeling.

21. Drugs approved for foreign markets often would be unapproved drugs under United States law even if chemically identical to the U.S.-approved version. Foreign drugs may have different approved labeling (including different warnings, dosage recommendations, and indications for use) and may be manufactured in someplace other than the location approved in the U.S. approval process.

22. Section 18 U.S.C. § 545 prohibits, among other things, any person from fraudulently or knowingly importing any merchandise contrary to law or receiving, buying, selling, concealing or in any manner facilitating any such actions for merchandise brought into the United States knowing that it was imported contrary to law. Importing and or selling drugs without specific approval of the drug and without meeting the required labeling as detailed in the above statutes and regulations is the importing of merchandise contrary to law and a violation of 18 U.S.C. § 545. Proceeds or property derived from proceeds

traceable to such violations are subject to forfeiture under 18 U.S.C. § 981(a)(1)(C). Proceeds and property involved in or derived therefrom that are from a financial transaction which involves proceeds of a specified unlawful activity (18 U.S.C. § 545) with the purpose to conceal or disguise the nature, location, source, ownership, or the control of the proceeds is also subject to forfeiture under 18 U.S.C. 981(a)(1)(A).

FACTS SUPPORTING IMPORTATION CONTRARY TO LAW

23. Interviews of physicians who purchased oncology drugs that were not approved by the FDA identified MONTANA HEALTHCARE SOLUTIONS, Inc. (MTHCS) as one of their sources for the purchase of unapproved oncology drugs.

24. Montana Healthcare Solutions, Inc., (MTHCS) was incorporated in Montana on or about January 31, 2007. According to the Articles of Incorporation, Paul D. Bottomley was listed as the only director. He is known as the president of the corporation. Paul D. Bottomley was also listed as the registered agent, residing at 4959 Hallelujah Lane, Belgrade, MT. On or about April 4, 2011, a name change was filed with the Montana Secretary of State changing the name of the entity from Montana Healthcare Solutions, Inc. to Peak Pharmaceutical Solutions, Inc. Documents sent to taxing authorities however, indicate that the entities utilize the same tax identification number, and bank

account numbers at First Montana Bank stayed the same on the corporate accounts.

25. Bottomley is a citizen of the United Kingdom residing legally in the United States as a Permanent Resident Alien. Bottomley's "Application for Immigration Visa and Alien Registration", dated September 03, 2005, lists his occupation as "Company Director (Pharmaceutical Distribution)" with an address in the United Kingdom. In other public records available in 2005, Bottomley states his occupation as pharmaceutical sales.

26. Bottomley was issued a drivers license by the State of Montana, Department of Justice, Motor Vehicle Division, which shows an address of 3743 Reese Creek Rd, Belgrade, MT 59714. This address is the mailing address for one of the Defendant properties.

27. Bank records from First Montana Bank for Account #XXXXXX4182, which is in the name of "Paul Bottomley" list a printed address of "4959 Hallelujah Lane" which is crossed out and now reflects a handwritten new address of "3743 Reese Creek Rd". Both addresses are for various parcels of the Defendant real property.

28. May 8, 2010, facebook postings by Bottomley indicate that he lives in Montana, and has a "small consulting/pharma distribution business" which

will be run from his office.

29. A check of postal records indicated that Mr. Bottomley currently resides at 3743 Reese Creek Road, Belgrade MT 59714. Bottomley also uses the address 3733 Reese Creek Rd as a business address. Bottomley previously resided at 4959 Hallelujah Lane, Belgrade MT 59714, and also used the address 4961 Hallelujah Lane, Belgrade MT, 59714, as a business address.

30. Between on or about May 28, 2008, and October 7, 2010, Bottomley was receiving mail and packages from USPS for MTHCS on a frequent basis.

31. The 4959 and 4961 Hallelujah Lane, Belgrade, Montana addresses appear to be one residence, plus an outbuilding. On the outbuilding, there was a taped sign which states, "Montana Healthcare Solutions, Inc Business ceased trading October 15th, 2010 Contact: Paul Bottomley @ 406-599-8993". Despite allegedly ceasing to do business in 2010, two bank accounts held at First Montana Bank in the name of MTHCS, changed to Peak Pharmaceutical Solutions, Inc., received over \$1,461,000 in deposits in 2011 for account number xxxxx4605 and over \$5,500,000 in account number xxxxx4540 in 2011.

32. Bottomley made statements in passing to postal personnel indicating that he used FedEx to ship packages out as part of his business. Bottomley also commented on his business to postal personnel, claiming he "supplied

pharmaceutical drugs to doctors in the U.S."

33. In or around August 2008, Novartis, a United States drug manufacturer, identified MTHCS as a wholesale distributor that was selling an oncology drug called Zometa that was manufactured by Novartis. MTHCS' reported price for Zometa was far below the normal wholesale price. Novartis hired Corporate Consulting Group LLC ("CCC"), a security consulting firm, to investigate MTHCS.

34. CCC set up an undercover investigator who claimed to own a company that claimed to be a wholesale distributor of prescription drugs. Through its undercover investigator, CCC contacted Bottomley and MTHCS to arrange a purchase of 2 units of Zometa from MTHCS. Bottomley served as the contact with CCC for this sale, emailing CCC's investigator and discussing the proposed order with the investigator.

35. On or about September 24, 2008, Bottomley offered to sell 2 units of Zometa to CCC's undercover investigator at a below-market price of \$650-675 per unit. CCC's undercover investigator agreed to purchase 2 units at the quoted price.

36. On or about October 3, 2008, Bottomley contacted CCC's undercover investigator and stated that he had received a shipment of Zometa. CCC's undercover investigator faxed and emailed Bottomley a purchase order for two

units of Zometa at \$650 per unit, the price quoted by Bottomley.

37. On or about October 6, 2008, Bottomley contacted CCC's investigator via email seeking credit card information for payment for the two vials of Zometa. CCC emailed Bottomley with credit card information and shipping information.

38. On October 8, 2008, CCC's investigator received a shipment of two vials of a drug purported to be Zometa from MTHCS. The labeling accompanying the drugs revealed that the product was made for distribution in the United Kingdom, Ireland, and Malta, and manufactured by a Novartis subsidiary in Germany. The omission of the United States for distribution on the label indicates the drug was not subject to the inspection required by U.S. law and therefore imported contrary to law. Novartis manufactures the Zometa approved under its U.S. NDA within the United States.

39. Following the purchase of Zometa, Bottomley twice contacted CCC's investigator in October 2008, offering to sell additional drugs. CCC did not make any additional purchases.

40. On June 04, 2008, a mail shipment addressed from a foreign country, Stone Healthcare Limited, Pitcairn House Crown Squarecentrum 100, Burton On Trent Staffs, Great Britain DE 142 VWV, and addressed to Paul Bottomley/Montana Healthcare Solutions 4961 Hallelujah Lane, Belgrade, MT

59714, was detained at the JFK International Mail Facility.

41. The shipment contained Oxaliplatin and Docetaxel, both are IV injectable chemotherapy drugs for the treatment of specific cancers.

42. Bottomley was sent a "Notice of FDA Action" letter, dated July 15, 2008 (the "Notice"). The Notice stated the products in the packages were subject to refusal of admission into the United States for appearing to be violative of the FDCA. The notice specifically detailed that all drugs in the shipment were misbranded and unapproved with citations to the particular regulations. The Notice stated that if Bottomley believed the products actually complied with the law, he could contact Helen Jacobs the compliance officer.

43. On August 07, 2008, an FDA-Office of Criminal Investigations Special Agent interviewed Bottomley at his residence in Belgrade, MT. During the interview, Bottomley stated that he had been a pharmacist in the United Kingdom (UK). Bottomley further said he had a Montana business license in the name of Montana Healthcare Solutions, Inc. Bottomley stated that his business largely involved providing consulting services to the UK's National Health Service (N.H.S.) to assist them in obtaining cutting edge drugs, currently available in the United States, but not yet available to the rest of the world. Bottomley stated that he was attempting to be the contact point person in the United States for the

transactions for the National Health Service. To do so, Bottomley had procured the proper Montana state licensing to be a wholesaler dealer. At the time, Bottomley claimed that he was awaiting a list of medications from the National Health Service in the UK. Bottomley claimed that he was currently working with two companies in the UK in the bid tendering process, BR Pharma and Unlicensed Medicines, LTD (ULM). According to Bottomley, these two companies worked directly with the UK National Health Service.

44. Bottomley stated that prior to starting his own business, he was affiliated with Medication Brokers, a business based out of California as a contractor. Bottomley showed the agent his previous contract with Medication Brokers, signed by James Newcomb.

45. Bottomley stated he met James Newcomb through a mutual friend. He believes that Medication Brokers is incorporated under another name and does business as Medication Brokers.

46. Bottomley further explained that James Newcomb'S background was in Information Technology (IT) and that Newcomb was attempting to apply search engine technology in order to obtain pharmaceuticals at lower prices.

47. Bottomley explained that Medication Brokers was started by a group of Southern California physicians who had non-compliant medication patients in

their practices. Patients, especially those with lower incomes, would not take their prescribed medications on a regular basis because of the costs. The goal of Medication Brokers was to obtain lower cost medications, from sources within the United States and other Western sources. Medication Brokers would not attempt to obtain medications from India or Mexico.

48. Bottomley explained that he traveled from Belgrade, Montana to La Jolla, California, for a week to two weeks at a time to work for Medication Brokers. His job generally entailed interaction with physicians and hospitals. Bottomley was involved primarily because of his medical background and he could speak the same "language" as the doctors and hospitals.

49. The Fact Sheet for Medication Brokers listed Paul Bottomley as Executive Vice-President - G.M. Bottomley stated that Newcomb was not being totally truthful, since he was only a contractor for Medication Brokers. Bottomley also stated that Newcomb and Medication Brokers had been subject to a \$5,000.00 citation by the state of California because the business lacked a Wholesale License.

50. Bottomley stated that he left Medication Brokers in April 2008, due to his desire to start his own business and limit his travel to spend more time with his family. He also claimed that he had an uneasy feeling about Newcomb's business,

particularly because of the citation from California against Newcomb and Medication Brokers. At the time, Bottomley was attempting to obtain his green card (US Resident Alien Card).

51. Bottomley stated that prior to his departure from Medication Brokers, he had been asked by Newcomb to look for boxes that may arrive at his Montana address. Bottomley stated he had forgotten about the boxes until he received the FDA Notices in the mail. He presumed that these were the boxes Newcomb had previously mentioned. Since he was no longer involved with Medication Brokers, Bottomley emailed HELEN.JACOBS@FDA.HHS.GOV, the FDA contact listed on the Notice of Detention, dated June 04, 2008. Bottomley stated that he advised the email recipient that he was not involved with the shipment and that he was refusing the shipment.

52. On May 18, 2011, a federal search warrant was executed for the business, Bandune Marketing (BDMI), formerly known as Medication Brokers, and the residence of James Newcomb, located in La Jolla, California. The search warrant was seeking information related to the sale and distribution of unapproved oncology drugs in the United States.

53. On February 21, 2012, Newcomb pled guilty to one count of conspiring to distribute adulterated prescription drugs to physicians.

54. On December 14, 2011, an interview with a Bandune Marketing Employee, Behe, was conducted. Behe worked for BDMI and Newcomb and is knowledgeable about BDMI's operations. The interview focused on the employee's knowledge and participation in the operation of Bandune Marketing, Inc (BDMI), formerly known as Medication Brokers, and many associated entities and subjects related to BDMI. The associated entities included MTHCS and Paul Bottomley.

55. Behe stated that Newcomb established BDMI, and hired Bottomley as a sales representative. Behe understood Bottomley was from the United Kingdom (UK) and moved from the UK to the State of Montana, but worked for BDMI by conducting sales calls to oncology offices in the Los Angeles area.

56. Newcomb told Behe that prior to moving to the United States, Bottomley worked for Richard Taylor for seventeen years in the United Kingdom. TAYLOR owns Richard's Pharma ("Richards") a UK company. Richard's Pharma supplied unapproved oncology drugs to BDMI. Newcomb further told Behe that Bottomley brokered the relationship between Newcomb and Richard Taylor, and that Taylor later asked Newcomb to hire Bottomley.

57. Newcomb told Behe that Bottomley stored oncology drugs purchased by BDMI at his residence in Montana. Behe later spoke with Debbie Martin, an

employee who worked for a doctor named Phyllis Klein in Covina, California.

Martin stated that Bottomley would ship drugs that he received from overseas on behalf of BDMI overnight to Klein's practice from his home address in Montana.

58. According to Newcomb, Bottomley boasted that state authorities came to his home to inspect his wholesale operation, but they did not inspect his storage area and never learned that he stored cancer drugs at his residence.

59. Behe believed that Richard Taylor began selling oncology drugs to Bottomley after Bottomley left BDMI and started MTHCS. Richard Taylor operated Richard's Pharma out of the UK. Bank records show that Bottomley's corporation, MTHCS wired over \$4,000,000 to Richard's Pharma between October 2008 and November 2010. Bottomley frequently asked Newcomb if any of his drug shipments were being seized in the United States. Behe added that she had heard during this time that several of Bottomley's packages were intercepted by U.S. Customs and not delivered to customers. Behe stated she thought Bottomley's customs issues were similar to Newcomb's because they were in the same line of work of serving as wholesaler facilitating the import and sale of misbranded and adulterated drugs to U.S. doctors.

60. Newcomb told Behe that Bottomley had become scared of regulatory scrutiny and sold his company to a Canadian.

61. Behe stated that sometime in November 2010, following Bottomley's sale of MTHCS, Taylor and Newcomb met in San Diego. Taylor told Newcomb that he met with Bottomley the same week. Behe said Newcomb and Taylor also talked about the price competition from Bottomley and how to make more profits. Newcomb told Taylor that if they wanted to compete with Bottomley and the new buyer, Taylor would need to drop his prices.

62. Taylor and Newcomb later met in January 2011 in Vancouver, British Columbia. Taylor told Newcomb that he was still supplying Bottomley with products. Behe believed that this was certainly true; BDMI would sometimes place orders with Taylor and Richard's Pharma based on recent inventory reports from Richard's Pharma indicating that Richard's Pharma had a large amount of a certain drug in stock, only to be told that Richard's Pharma did not have as much product in stock as previously reported. Behe believed that Richard's Pharma was selling its product to Bottomley.

63. Under a Mutual Legal Assistance Treaty for HSBC Bank records for accounts of Richard's Pharma LTD/Richard Taylor were produced. The HSBC Bank records provided by the United Kingdom reflected several transactions with "Montana Healthcare", a reference to MTHCS.

64. Analysis of bank accounts for Bottomley and MTHCS revealed that

between October 14, 2008 and November 16, 2010, Bottomley made wire transfers totaling \$4,192,847.33 from his accounts to Richard's Pharma, HSBC Account #xxxx6146.

65. The financial records further revealed that Bottomley made additional wire transfers to Berryfarm Ltd., Farma Mondo, River East Supplies Ltd., Sangani Ltd, Stone Healthcare Ltd, Paminta AG and Healthwise Pharmacy Ltd. Each of these entities is involved in wholesale distribution of prescription drugs outside the United States. The payments to these entities and Richard's Pharma totaled \$10,251,722.97.

66. On September 19, 2011, the office manager for Dr. Glenn Tisman located in California, was interviewed. The office manager said she has purchased oncology drugs from MTHCS. A couple of years ago, Paul Bottomley had come to their office as a sales representative. She described Bottomley as a white male with a British accent. The manager said she still has an outstanding balance for oncology drugs purchased from MTHCS.

67. On September 09, 2011, Dr. Tisman's office manager received an email communication from a Maya Wisher from MTHCS, which was from an email account identified as maya@methcs.us. On the email, a carbon copy (CC) was sent to Paul Bottomley reflecting his continued involvement in MTHCS.

68. On September 22, 2011, Dr. Tisman's office manager provided three copies of checks from Glenn Tisman MD A Medical Group (the "Tisman Group") to MTHCS with the address of 4961 Hallelujah Lane, Belgrade, Montana 59714-8730. The checks were payments for oncology drugs purchased by the Tisman Group from MTHCS. One check exceeding \$11,000 dated February 28, 2011 was deposited on March 01, 2011 at the First Montana Bank, located in the State of Montana, into an account for MTHCS, account number xxxxx4540. A second check from Tisman in excess of \$14,500 dated March 3, 2011 made out to MTHCS, was deposited on March 14, 2011 at the First Montana Bank, located in the State of Montana, into an account for MTCHS, account number xxxxx4540. Bottomley is the sole signature authority on the account. Also, the signature card on the bank account lists Bottomley as the President of MTHCS.

69. Another check from Glenn Tisman MD A Medical Group, made out to MTHCS, dated August 29, 2011 was deposited on September 13, 2011 at Canada Trust, located in Winnipeg, Canada.

70. On December 07, 2011, Dr. Tisman's office manager made a consensually monitored telephone call to MTHCS at (800) 844-1390. The telephone call was answered by a woman who identified herself as Maya. The office manager asked about Bottomley being at the company, Wisner said, "he is

and he isn't, he still sort of corresponds with us and still works with us and still works with all of you guys but he, I guess no longer owns the company, but he is still involved, he's still very much involved." Wisher further stated, "He's still involved with it, he still goes to the clinics and everything. Our mailing address is now in Canada because Paul no longer has the space that he used to rent so now all the checks are coming up to us."

71. When Dr. Tisman's office manager asked Wisher if the drugs were FDA approved, Wisher said, "None of the drugs we sold were ever FDA approved, even when Paul (Bottomley) was selling it, all the drugs when sale that's why they were European or for UK sales, they're English, but they're for Europe right, FDA is only ever in the United States. That's why you were able to get the prices that you were getting. This is from way before Paul (Bottomley) ever, how Paul's always been running it. "

72. On January 31, 2012, Bottomley left a message with the Tisman Group office, in which he told the staff he was from "Montana Healthcare" with telephone number (406) 599-8993.

73. On February 2, 2012, Bottomley sent Nancy Tisman an email from the address paul@peakpharma.us. Bottomley stated that his day-to-day involvement in MTHCS had "dwindled" in the past 18 months since he sold his part of the

company in 2010. Bottomley stated that the current owners used him on a consulting basis from time to time, and he could probably help with Tisman's issues. Bottomley stated that he would be back in the U.S. on Feb. 27th. He signed the email with:

“Paul D Bottomley
Peak Pharmaceutical Services Inc
3733 Reese Creek Rd
Belgrade MT 59714
USA
Phone : 1-406-388-0566
Fax: 1-406-388-0565
Cell: 1-406-599-8993”.

74. On January 13, 2012, FDA-Office of Criminal Investigations received information from the United Kingdom Medicines and Healthcare Products Regulatory Agency (MHRA), United Kingdom, regarding a potential counterfeit oncology drug known as Avastin. MHRA informed FDA-OCI that they became aware of a United Kingdom wholesaler that purchased 167 packs of Avastin 400 mg bearing batch number B6011B02 from a supplier in the European Union (EU). The United Kingdom wholesaler sold 41 of these packs to Volunteer Distribution ("Volunteer"), a company located in Gainesboro, Tennessee.

75. Initial preliminary analysis conducted by MHRA with the United Kingdom wholesaler indicated at minimum the potential existence of counterfeit

labeling on the Avastin. A subsequent lab analysis of the Avastin determined the drug to be counterfeit.

76. The United Kingdom wholesaler contacted Kevin Combs, who is the co-owner and operator of Volunteer, and informed him of the fact that Avastin purchased by Volunteer was counterfeit.

77. An FDA-OCI Special Agent interviewed Combs and his business partner, Bryan Phillips, who stated that Volunteer Distribution had already sold and shipped 36 of the 41 packs of Avastin. The 5 remaining packs were shipped back to the United Kingdom wholesaler.

78. Combs admitted to receiving oncology medications, including the suspect Avastin, from a company identified as River East Supplies Ltd. ("River East"), which is located in the United Kingdom.

79. Bank records for Bottomley and MTHCS revealed that between November 18, 2009 and August 20, 2010, Bottomley and MTHCS made nine wire transfers totaling \$330,248.58 to bank accounts for River East.

80. Combs said that in August 2010, he opened a wholesale business called Volunteer Distribution. He said that he connected with a company called QSP, which offered to send him oncology drugs with the understanding that he would ship those drugs to their clients once he was provided with the client list. Combs

said that he would receive a quantity of oncology drugs from the United Kingdom which he stored until he received the client list, which would specify the names of clients targeted to receive drugs.

81. Combs would then login into QSP's internet login screen where he would obtain the packing list which he used to ship the drug to the individual clients. The packing list listed the names of the clients and the amount of each drug they would receive. The packing list also includes "Montana Healthcare Solutions" in the upper left-hand corner with a symbol associated with MTHCS.

82. Combs said that he has never communicated with any of the individuals being shipped the product. Combs stated that he was paid \$10 by wire transfer for each vial shipped with a max of \$45/shipment. Combs stated that during this venture, he communicated with Darren Challus, Troy Nokamura, Erin (LNU), Maya Wisher, and Narinder Kaulder.

83. Combs said other companies mentioned and/or involved in the distribution of these foreign oncology drugs are Rockley Ventures, MTHCS, and River East.

84. Combs stated that he was contacted by Nokamura in November or December 2011 regarding the possibility that Volunteer had purchased counterfeit Avastin. On behalf of River East, Nokamura recalled all of the Avastin it

distributed to Volunteer. Combs stated that he returned a quantity of the Avastin as well as any other drug they had previously received back from clients to River East. Combs stated that he did not contact customers who had received shipments of Avastin from Volunteer, because Nokamura stated he or his company would contact the customers.

85. Combs and Phillips released all of their records regarding their association with River East and the entities associated with Volunteer's purchases and distribution of foreign-sourced cancer drugs.

86. A review of Volunteer Distribution records by FDA-OCI agents revealed that the oncology drugs were being shipped to Volunteer via Parcel Force (UK Mail) from River East Supplies LTD, W Block Beeston Business Park, Technology Drive, Beeston, Nottingham, United Kingdom. The Customs Declaration Form for each package declared the package to contain "Medical Products." Based on review of the records, there is no mention on the custom declarations that the packages contain pharmaceuticals.

87. A review of the Volunteer Distribution records revealed the Beverly Hills Cancer Center ("BHCC") as a customer which received oncology drugs from Volunteer.

88. On February 1, 2012, an FDA-OCI investigator interviewed the

Administrator of BHCC, located in Beverly Hills, CA. The administrator stated that BHCC has been receiving chemotherapy drugs from MTHCS for several years. She stated that their point of contact is Paul Bottomley, who is a sales representative for MTHCS. The administrator stated that BHCC believed that MTHCS was a US authorized wholesale distributor. FDA records indicate that Paul Bottomley is not an authorized wholesale distributor in the United States for oncology drugs.

89. The administrator for BHCC stated that the drugs BHCC received from Volunteer were pursuant to orders BHCC placed with MTHCS, and that BHCC paid MTHCS for the drugs it received from Volunteer. The administrator said that they knew the drugs were foreign versions of US product based on the price being charged as well as the packaging. For example, MTHCS charged BHCC \$1,700 per vial for Avastin, when the product would normally cost nearly \$2,300 per vial. She stated that even though they received foreign product, they ordered what they thought was US product.

90. A review of the Volunteer Distribution records revealed that a doctor named Mohamed Ghraawi, located in Corpus Christi, Texas, was a customer who received oncology drugs from Volunteer.

91. On February 13, 2012, an FDI-OCI Special Agent interviewed a

pharmacy technician working for Mohamed Ghraawi's doctor's office. The pharmacy technician turned over a number of drug products that the practice had purchased from MTHCS. None of the packages had the required NDC codes. The package chosen for immediate sampling that had been turned over by Ghraawi's office is in a box and labeled with the brand name "Ribomustin." The labeling on the box states an expiration date for the drug and other information in a language other than English. This violates the laws set forth in the opening section of this complaint.

92. All approved drug products are listed in the FDA Orange Book of Approved Drug Products (electronic version available at <http://www.accessdata.fda.gov/scripts/cder/ob/default.cfm>) and on the FDA's website at Drugs@FDA (electronic version available at <http://www.accessdata.fda.gov/scripts/cder/drugsatfda/index.cfm>). A review of the FDA Electronic Orange Book, shows that a product with the drug name "Ribomustin" is not listed as having been approved by the FDA for sale in the United States.

93. A review of the Volunteer Distribution records revealed that the McLeod Cancer and Blood Center ("McLeod"), located in Johnson City, Tennessee, was a customer which received oncology drugs from Volunteer.

94. Employees of McLeod informed an FDA-OCI Special Agent that McLeod has been purchasing oncology drugs from QSP and MTHCS since 2007. On February 13, 2012 and February 16, 2012, McLeod turned over to FDA-OCI oncology drugs that were received and distributed by Volunteer Distribution on behalf of QSP and MTHCS. The package of drugs chosen for inspection turned over by McLeod is in a box labeled as "Azasitidin 100gm" with additional information on the package in a language other than English. All of the packages turned over contained drugs that were either misbranded and or unapproved. This violates the statutes and regulations set forth above. A review of the FDA Electronic Orange Book shows that a product with the drug name "Azasitidin" is not listed as having been approved by the FDA for sale in the United States.

95. A search of Bottomley's residence, office and computers showed sales activity reports between October 2010 through April 2011. The reports list products, using their foreign name, and then the alleged U.S. equivalent, and units sold. The country of origin for the drugs shows drugs coming from Turkey, European Union, India, Germany, New Zealand, and the Netherlands. A similar report for April to May 2011, reflected similar imports. None of the drugs listed is from the United States. None of the countries of origin on these reports reflects that any drugs were received from the United States. Based on all facts set forth

herein the entire business run by Bottomley is related to importing drugs contrary to law.

96. A review of bank records for account number xxxxx4540 shows that virtually all transfers of money by wire to purchase drug supplies from MTHCS bank account held at First Montana Bank, in the name of Montana Healthcare Solutions, Inc. (now in the name of Peak Pharmaceutical Solutions, Inc., but with the same EIN number) out of account number xxxxx4540 were to foreign wholesale drug companies in the amount of \$10,251,722 from 2007 through November 2011. Paul Bottomley is the sole signatory on the account. The company names include but are not limited to those set forth above and Berryfarm LTD (UK), Corena Ecza Deposu (Turkey), Farma Mondo (UK), Healthwise Pharmacy, LTD (Australia), Paminta AG (Switzerland), Richards Pharma (UK), River East Supplies LTD (UK), Sagani Ltd (UK), Stone Healthcare Ltd (UK). These entities are foreign wholesale drug companies.

97. Check or wire deposits into account xxxxx4540 totaled \$4,086,638 between 2007 through November 2011. These check deposits came from doctors and professional physician medical corporations for what appeared to be payment for the purchase of illegally imported foreign drugs. A wire transfer into the account in the approximate amount of \$3,500,000 was made in October, 2010.

This appears to be related to the sale of Bottomley's business to a Canadian corporation. The doctors and professional corporations writing checks were primarily made up of oncology specialists. In addition credit card deposits into the account for purchases between 2007 and November 2011 totaled \$18,739,943. Even after the purported sale of the business in 2010, over \$5,000,000 in credit card payments were deposited into this account. Based on the purchasing history all inventory from MTHCS came from foreign wholesale suppliers of misbranded and unapproved drugs.

98. From First Montana Bank Account number ending in xxxxx4540 transfers were made to accounts at First Montana Bank in the name of Paul Bottomley and/or Erin Bottomley from 2007 through November 2011 in the following amounts and to the following accounts:

xxxxxx7454	\$83,045
xxxxxx4613	\$3,598,308
xxxxxx1299	\$1,850,806
xxxxxx4182	\$436,737
xxxxxx5369	\$229,752

99. The other account at First Montana Bank in the name of MTHCS (now Peak Pharmaceutical Solutions, Inc. but with the same EIN as MTHCS) xxxxx4605 received deposits primarily from checks associated with oncology doctors and professional corporations or transfers from account xxxxx4540 above,

in the total amount of \$7,415,398 from 2007 through November 2011. Even after the purported sale in October 2010, over \$1,400,000 was deposited into this account in 2011. From this MTHCS account ending in xxxxx4605 transfers are made to the personal accounts at First Montana Bank held in the name of Paul Bottomley and/or Erin Bottomley in the following amounts from 2009 through November 2011:

xxxxxx7454	\$721,000
xxxxxx4613	\$1,125,000
xxxxxx1299	\$450,000
xxxxxx4182	\$214,000
xxxxxx5369	\$40,002

100. In addition, a review of loan files from First Montana Bank for loans to Paul and Erin Bottomley reflected financial information provided by the Bottomley's to the bank. In the loan file were Inventory Valuation Summaries for MTHCS for various months in 2009 and 2010. The summaries included the names of drugs, the quantity on hand, cost, asset value and sales price. All of the drugs listed for sale were oncology drugs. Based on these numerous Inventory Valuation Summaries, it is apparent that oncology drugs were the primary type of drugs that Bottomley sold. Again from review of MTHCS bank accounts all purchasing appeared to be made from foreign drug suppliers.

101. Also included in the loan files were several copies of profit and Loss

statements for Montana Healthcare Solutions, Inc. The copy of the Profit and Loss statement for the period July 2008 contains handwritten notes as follows: “Sells chemotherapy drugs to doctors oncology 10-12 types 20-25% markup saves doctors 10%”. This statement reflects the savings from the illegal smuggling of the foreign drugs.

102. The Defendant real property, defendant vehicles, and defendant funds were proceeds, or were assets either purchased or obtained from proceeds, derived from the illegally imported drugs or the sale of the business and continued contracting relationship between Bottomley and the purchaser, that continue to promote and sell to old customers and develop new customers for illegally imported drugs.

103. A total of \$1,095,378.17 in United States funds was seized from the bank accounts described in paragraphs 96, 97, 98, and 99, as proceeds from smuggling and money laundering. The accounts were frozen subject to service of a seizure warrant and funds provided to law enforcement in the following amounts: account ending in 4540: \$5,196.13; account ending in 4605: \$5,324.83; account ending in 6590: \$850,159.21; account ending in 1299: \$230,883.72; account ending in 4182: \$3,814.28. Also from account ending in 4613 in the name of Paul and or Erin Bottomley, the following cashiers checks were

purchased by Paul Bottomley and made payable as follows:

1-26-09 \$95,180.21 payable to Stewart Title

For the apparent payoff of an existing real estate mortgage or trust indenture owed for the purchase or enhancement of Tract A-2 of Certificate of Survey No. 957-A, being a portion of Tract A of Certificate of Survey No. 957, located in the E1/2 NE1/4 of Section 2, Township 1 South, Range 5 East, P.M.M., Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder of Gallatin County, Montana.

Tract 1 of Certificate of Survey No. 2687, a tract of land located in Section 3, Township 1 North, Range 5 East, P.M.M., Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder of Gallatin County, Montana, in the name of Paul Bottomley and Erin E. Bottomley.

9-29-10 \$399,173.74 payable to American Land Title

For the purchase of Lot 4 of Certificate of Survey No. 2205, located in the NW1/4 of Section 3, Township 1 North, Range 5 East, M.P.M., Gallatin County, Montana in the name of Paul D. Bottomley and Erin E. Bottomley.

11-2-10 \$422,156.77 and \$1,000.00 payable to Montana Title and Escrow

For the purchase of Tract 2 of Certificate of Survey No. 2169A, located in the NE1/4 of Section 3, Township 1 North, Range 5 East, P.M.M., Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder, Gallatin County, Montana, in the name of Paul Daniel Bottomley.

1-24-11 \$124,140.00 payable to Insured Titles

For the apparent purchase of Tract 11 of Certificate of Survey No. 448-A, located in Section 11, Township 1 North, Range 7 East, P.M.M., Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder, Gallatin County, Montana in the name of Paul D.

Bottomley and Erin E. Bottomley.

2-11-11 \$589,293.08 payable to Security Title Co.

For the apparent purchase of Tract 1 of Certificate of Survey No. 2169A, located in the NE1/4 of Section 3, Township 1 North, Range 5 East P.M.M., Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder, Gallatin County, Montana, in the name of Paul D. Bottomley and Erin E. Bottomley.

2-15-11 \$715,010.96 payable to Insured Titles

For the apparent purchase of Tracts 12, 13, 14, and 19 of Certificate of Survey No. 448-A, located in Section 11, Township 1 North, Range 7 East, P.M.M., Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder, Gallatin County, Montana, in the name of Paul D. Bottomley and Erin E. Bottomley.

10-18-11 \$50,000 payable to Montana Title Company as earnest money, and an additional payment on 10-26-11 of \$825,302.23 payable to Montana Title and Escrow for the purchase of property more particularly described as follows: W1/2NE1/4 and the NW1/4 East of the centerline of Middle Creek, all in Section 30, Township 1 South, Range 5 East, Gallatin County, Montana, in the name of Paul and Erin Bottomley.

104. In addition, Paul Bottomley and Erin Elizabeth Bottomley provided real property known as 4959 Hallelujah Lane Belgrade, Montana, more particularly described as follows as security for a loan in the amount of \$365,000.00:

Tract A-2 of Certificate of Survey No. 957-A, being a portion of Tract A of Certificate of Survey No. 957, located in the E1/2NE1/4 of Section 2, Township 1 South, Range 5 East, P.M.M., Gallatin County, Montana, according to the official plat thereof on file and of record in

the office of the County Clerk and Recorder of Gallatin County.

This property was provided as security for a loan in the amount of \$365,000.00 pursuant to a Deed of Trust dated January 26, 2009 owed to First National Bank of Montana, which merged with First Montana Bank and now known as First Montana Bank. This loan was paid in full on February 13, 2009.

105. From the personal account ending in 4613 at First Montana Bank in the name of Paul and Erin Bottomley, a wire transfer in the amount of \$157,000 to Galpin Jaguar in Los Angeles was made on or about June 29, 2011 for the purchase of a 2011 Aston Martin/Vantage V-12, VIN# SCFEBBCF7BGS00607. This purchase was confirmed with records from the dealership. No lien is on this vehicle. There are no other deposits into account ending 4613 other than from the MTHCS accounts ending in 4540 and 4605.

106. From the personal account ending in 4605 at First Montana Bank in the name of MTHCS , a cashiers check was purchased in the amount of \$40,005.00 on December 21, 2010. This cashiers check was made payable to Bozeman Ford for the purchase of a 2011 Ford Expedition, VIN 1FMJK2A59BEF05766.

107. On April 4, 2011, Paul Bottomley filed with the Secretary of State for the State of Montana a name change amending the articles of incorporation for

Montana Healthcare Solutions, Inc. The name was changed from Montana Healthcare Solutions, Inc. to Peak Pharmaceutical Solutions, Inc. The amendment to the articles was signed by Paul D. Bottomley, President/Secretary. In May 2011 Bottomley provided the name change to First Montana Bank, but maintained the same bank account numbers of xxxxx4605 and xxxxx4520 for the corporate accounts previously in the name of MTHCS. During the search of Bottomley's property information on computers reflected that the new corporate entity continues to use the same Federal employee identification number for both Montana Healthcare Solutions, Inc. and Peak Pharmaceutical Services, Inc. A letter to taxing authorities indicates that "[w]e have seamlessly (sic) made payments for the corporation under its former and current name using our FEIN# xx-xxx1442." The letter goes on to ask that the newly issued ID number be deactivated so that the corporation can use its prior number just using its new name.

108. On or about October, 2010, Bottomley sold MTHCS to a Canadian company by the name of Rockley Ventures Ltd. MTHCS consisted of customer and purchaser contact lists for the purchase and importation of the illegal drugs and the illegal sale of those drugs to oncology doctors all in violation of 18 U.S.C. § 545. At or around the same time Bottomley on behalf of his company Peak Pharmaceutical Services, Inc., executed an independent contractor agreement that

provided that Bottomley through Peak Pharmaceutical would use reasonable commercial efforts to promote and market Montana Healthcare Solutions, would generate leads to Potential New Customers, would direct Potential New Customers to Montana Healthcare Solutions, and would supply information or similar activities which have a preparatory or auxiliary character to the customers dealings with the Company. This shows that Bottomley and Peak Pharmaceuticals continued to facilitate the specified unlawful activity of violations of 18 U.S.C. § 545 and 18 U.S.C. § 1956(a).

109. The proceeds from the sale of Bottomley's business MTHCS in the approximate amount of \$3,500,000 were first deposited into First Montana Bank, account number xxxxx4540 in the name of MTHCS and then transferred to the personal account xxxxx4613 in the name of Paul and or Erin Bottomley. Proceeds from this account were utilized in part to purchase the Defendant real and personal property described above. Bottomley in an interview conducted on February 26, 2012 confirmed that the proceeds from the sale of the business were utilized to purchase property.

CLAIM FOR RELIEF

110. Title 18, United States Code, Section 545, prohibits a person from fraudulently or knowingly importing or bringing into the United States, any

merchandise contrary to law, or receiving, concealing, buying, selling, or in any manner facilitating the transportation, concealment, or sale of such merchandise after importation, knowing the merchandise to have been brought into the United States contrary to law. A violation of 18 U.S.C. Section 545 is a specified unlawful activity for money laundering. 18 U.S.C. § 1956(a)(7)(D).

111. Probable cause exists to support the knowing importation of merchandise contrary to law, in this case oncology drugs as set forth in detail above, by Paul Bottomley and MTHCS, with continued facilitation by Peak Pharmaceutical Solutions, Inc., the probable cause to include, but not be limited to Bottomley's long term experience in the business as shown by his representation to others that he was a pharmacist in the UK, his long term work experience for the drug importer Richard's Pharma, his statements that he has experience in pharmaceutical sales, and his representation to bank officers of his consulting and pharmacy business experience. He has knowledge of the drug importation requirements, if not through his years in the pharmacy business, but through specific notice of violations through the FDA letter when prior shipments were detained. Repeatedly MTHCS and businesses it works with were tied to shipments of mislabeled drugs and drugs without the required National Drug Code as outlined above. Finally MTHCS and Bottomley are tied to counterfeit Avastin

through the recent searches and interviews above. Bottomley continues to facilitate the purchase, sale, concealment, and transportation by this continued consulting and contract work with MTHCS even after the sale to Canadians. The sale of the business itself and proceeds derived therefrom facilitate the concealment, purchase sale and transportation of the illegally imported drugs by continuing the corporate business in Canada, but facilitating the continued transportation and sales of illegally imported oncology drugs into the United States for sale to physicians.

112. Probable cause for civil forfeiture also exists related to money laundering violations of 18 U.S.C. Section 1956(a)(1)(B)(i). Under 18 U.S.C. Section 981(a)(1)(A) a violation of section 1956 allows for civil forfeiture of any property, real or personal, involved in a transaction or attempted transaction in violation of section 1956 or any property traceable to such property. Under Section 1956, whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct any financial transaction which in fact involves the proceeds of specified unlawful activity, knowing that the transaction is designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity, is guilty of a money

laundering violation. 18 U.S.C. Section 1956(a)(1)(B)(i).

113. The term “transaction” is defined for the purpose of money laundering to include with respect to a financial institution deposits, withdrawals, transfers between accounts, exchange of currency, loans, extensions of credit, purchase of stock, bonds, certificates of deposit, or other monetary instruments, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected. The term “financial transaction” means a transaction which in any way or degree affects interstate commerce involving the movement of funds by wire or other means or a transaction involving the use of a financial institution which is engaged in, or the activities of which affect interstate commerce in any way or degree. 18 U.S.C. § 1956 (3) and (4).

114. Probable cause for money laundering violations in this case includes, but is not limited to, the following: the creation of MTHCS whose entire purpose was to illegally import, contrary to law, drugs and then to sell the illegal drugs to oncology doctors and other doctors in violation of 18 U.S.C. Section 545; the use of at least two corporate bank accounts in the name of MTHCS for the deposit of proceeds related to violations of 18 U.S.C. § 545, which is a specified unlawful activity under 1956(c)(7)(D); the further transfer of funds from corporate checking accounts to at least 5 separate personal accounts, the then transfer of money from

personal accounts to purchase real and personal property; the name change on the corporate account and business from MTHCS to Peak Pharmaceutical Solutions, Inc., to help conceal or disguise the nature, source, ownership and or control of the business of illegally importing drugs, the sale to a foreign corporation but continued substantial assistance in making sales of illegally imported drugs, and the proceeds from the sale of a business entity entirely devoted to the illegal importation of drugs in violation of Section 545 moving from corporate accounts to personal accounts and then to the purchase of Defendant real and personal property.

115. All proceeds in the corporate accounts were generated either from the sale of illegally imported drugs or the sale of a business whose sole purpose was to illegally import drugs. A portion of these proceeds bought the subject real property and the vehicles, or were used to pay mortgages on the subject real property, or were transferred to personal accounts to do the same. A portion of these proceeds remained in the corporate accounts and in the personal accounts, which were seized.

116. Title 18, United States Code, Section 981 (a)(1)(A) and (C) provides that property is subject to forfeiture, real or personal, which constitutes or is derived from proceeds traceable to a violation of 18 U.S.C. § 545. In addition for

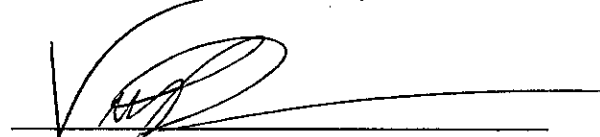
a violation of 18 U.S.C. § 981(a)(1)(A), any property, real or personal, involved in a violation or property traceable thereto is subject to forfeiture.

CONCLUSION

117. Based on the above facts and circumstances, there is probable cause to believe that the real and personal property described above is derived from proceeds traceable to violations of 18 U.S.C. §§ 545 and 1956. As such the subject property is forfeitable pursuant to 18 U.S.C. § 981(a)(i)(A) and (C) and 18 U.S.C. § 985.

DATED this 20th day of April, 2012.

MICHAEL W. COTTER
United States Attorney

A handwritten signature in black ink, appearing to read 'V. Francis', is written over a horizontal line.

VICTORIA L. FRANCIS
Assistant U.S. Attorney
Attorney for Plaintiff

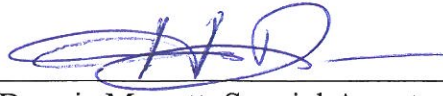
VERIFICATION

I, Dennis Mynatt, Special Agent with the Federal Drug Administration, Office of Criminal Investigations, hereby verify and declare under penalty of perjury that I have read the foregoing First Amended Verified Complaint *In Rem* and know the contents thereof, and that the matters contained in the First Amended Verified Complaint are true to my own knowledge, except that those matters therein stated to be alleged on information and belief, and as to those matters I believe them to be true.

The sources of my knowledge and information and the grounds of my belief are the official files and records of the United States, information supplied to me by other law enforcement officers, including interviews of witnesses, financial information provided under subpoena, information obtained through searches and undercover work, as well as my investigation of this case together with other federal law enforcement agents.

I hereby verify and declare under penalty of perjury that the foregoing is true and correct.

DATED this 20 day of April, 2012.



Dennis Mynatt, Special Agent
United States Food and Drug Administration
Office of Criminal Investigations
Los Angeles, California Field Office